

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,  
  
v. Criminal Action No. 3:17-cr-39-DJH  
  
LOGAN CHARLES SILLIMAN, Defendant.

\* \* \* \* \*

**ORDER**

Defendant Logan Charles Silliman has moved to suppress evidence seized and statements made as a result of searches of his residence on January 6 and February 14, 2017. (Docket No. 69) According to Silliman, the affidavit in support of the initial search warrant contained a false statement that was necessary to the probable-cause determination, and the warrant for the February 14 search was obtained using information from the unlawful January 6 search. (*Id.*) He seeks a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). (*Id.*, PageID # 188) The United States maintains that even absent the challenged statement, the warrant contained sufficient facts to establish probable cause for the search, and that thus no *Franks* hearing is required. (D.N. 72) The Court agrees and will therefore deny the motion to suppress without a hearing.

**I.**

Silliman is charged with distributing heroin on or about December 19, 2016, that resulted in the death of Gregory Allen and possessing heroin with the intent to distribute it on January 6 and February 14, 2017. (D.N. 12) Silliman challenges the searches of his residence on the latter two dates on the ground that the affidavit in support of the January 6 search warrant falsely stated that a Louisville Metro Police Department officer “had conducted a vehicle stop on

January 4, 2017 ‘on a subject who had been observed leaving [Silliman’s] address’” and that “this vehicle stop resulted in the recovery of suspected narcotics.”<sup>1</sup> (D.N. 69, PageID # 183 (quoting affidavit)) He offers three affidavits to demonstrate the falsity of these claims. (D.N. 69-3; D.N. 69-4; D.N. 69-5)

The United States “does not concede that the challenged statements are false” but argues that no hearing is warranted in any event “because the affidavit contains sufficient content to support a finding of probable cause even without the allegedly false statements.” (D.N. 72, PageID # 192 & n.1) It points to the following facts set forth in the affidavit:

- On December 18, 2016 at approximately 11:30 p.m., Gregory Allen returned to his home in Louisville after staying in California and receiving drug rehab for opioid addiction. (Affidavit For Search Warrant, 2-3).
- A review of Allen’s iPad showed he had reached out to a family member named Jeffrey Butler between 4:43 and 4:58 p.m. on the 19<sup>th</sup> in an apparent attempt to acquire heroin from a dealer by stating “U still f... with boy[?]” (*Id.* at 3-4).
- On December 20, 2016, Allen’s father found him deceased in his bed. (*Id.* at 2).
- There were two syringes found next to the body. (*Id.*).
- Allen’s father last spoke to him in the evening of the 19<sup>th</sup> before going to bed and discovered him the next morning at approximately 9:00 a.m. (*Id.* at 3).
- On December 21, 2016, Allen’s father called Sgt. Schardein to tell him that his other son found suspected heroin in Allen’s bedroom dresser. (*Id.* at 4).
- Police collected the heroin, which was wrapped in a torn piece of mail matter with a red “H” written on the paper. (*Id.* at 4).
- The mail matter contained the typed name and address: Logan Silliman, 1815 Gardner Ln Apt A. (*Id.*).
- Logan Charles Silliman was associated with 1815 Gardiner Ln., Apt. A15 through LMPD’s ILEADS system. (*Id.*)
- A detailed anonymous tip dated July 31, 2015 stated that Logan Silliman was selling heroin out of his apartment “24/7”, and that Silliman stored the drugs in his bedroom closet between the hanging clothes. (*Id.*)

---

<sup>1</sup> Silliman further asserts that “[w]ithout the information that was wrongfully gained in the January 6, 2017 search, . . . there was insufficient probable cause established in the February 14, 2017 affidavit.” (D.N. 69, PageID # 188)

- On November 24, 2015, Silliman called LMPD to report an attempted robbery at 1815 Gardiner Lane, A15.<sup>2</sup> (*Id.*)
- According to Silliman, an unidentified suspect attempted a home invasion robbery armed with a firearm. The suspect demanded money from Silliman and fired a shot during the altercation. (*Id.* at 5).
- Silliman admitted being a heroin user to police investigating the robbery. (*Id.*)
- Sgt. Schardein knows through his experience that drug dealers are often the target of other criminals who suspect the dealer is holding narcotics or sums of money. (*Id.* at 7).
- Multiple witnesses saw Silliman run out of the apartment and throw a large white garbage bag into the dumpster before the police arrived. (*Id.* at 5).
- A friend of Greg Allen named Ian Feusner told Allen's father at the funeral that he was supposed to meet Allen on the day of his death, but Allen failed to meet him. (*Id.*)
- Feusner further stated he was confident that Allen bought the heroin from "Logan" who lived in the area of Gardiner Lane off Bardstown Road. (*Id.*)
- A review of Allen's iPad showed six calls and/or text messages between Allen and a "burner" phone subscribed to a fictitious person but associated with the same phone number Silliman used to report the [home invasion/attempted robbery].<sup>3</sup> (*Id.* at 6).
- Sgt. Schardein knows that drug dealers use "burner" phones to conceal their activities. (*Id.* at 7).
- LMPD Officer Lisa Doyle developed a confidential source of information (SOI) who stated that within the 3-4 weeks prior to the warrant's signing, the SOI had observed a pattern of people making short stays at Silliman's Gardiner Lane apartment consistent with drug dealing. (*Id.* at 6).

(D.N. 72, PageID # 192-93; *see* D.N. 72-2)

---

<sup>2</sup> The parties agreed during oral argument that the date of the attempted robbery is not clear from the affidavit, which states that Silliman

utilized telephone 502-407-6560 when contacting LMPD on 11/24/2015 to report a Theft of Auto under report 80-15-095603 from 1815 Gardiner Lane A15, Louisville, Kentucky 40205. Further SILLIMAN was listed as a victim under LMPD 80-16-038377 in which he and his wife...were the victims of an apparent Home Invasion (Robbery 1st).

(D.N. 72-2, PageID # 204)

<sup>3</sup> Silliman's assertion that "[t]here is absolutely no information regarding when these calls were made" is inaccurate. (D.N. 69, PageID # 187) The affidavit states that the initial review of Allen's phone records covered the period from 12:30 a.m. on December 19, 2016, to approximately 4:30 p.m. on December 20, 2016, and that "a more specific review was conducted" after investigators learned more about Allen's activities on December 19. (D.N. 72-2, PageID # 205) Thus, the communications listed in the affidavit presumably occurred during an even narrower window of time between December 19 and 20.

In reply, Silliman maintains that the facts relied upon by the government are stale and that “all information about events prior to [March 11, 2016] was . . . demonstrably unreliable as well” because an LMPD investigation of his address was closed on that date with no finding of unlawful activity. (D.N. 73, PageID # 213) Silliman further contends that the statements by the confidential source and Feusner were not reliable or adequately supported (*id.*, PageID # 213-15) and that the piece of Silliman’s mail with heroin inside is insignificant. (*Id.*, PageID # 215) Without the “false and misleading evidence” or the “demonstrably unreliable and stale evidence,” Silliman contends, the affidavit is insufficient under *Franks*. (*Id.*, PageID # 213)

## II.

Pursuant to *Franks*,

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant’s request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit’s false material set to one side, the affidavit’s remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

438 U.S. at 155-56. Thus, “[n]o hearing is needed if the affidavit supports probable cause after setting aside any false statements.” *United States v. Brown*, 857 F.3d 334, 339 (6th Cir. 2017) (citing *Franks*, 438 U.S. at 171-72).

Probable cause exists when there is “a ‘fair probability that contraband or evidence of a crime will be found in a particular place.’” *United States v. Rodriguez*, 716 F. App’x 387, 388-89 (6th Cir. 2017) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). This is a “practical, common-sense” standard that takes into account “the totality of the circumstances” and allows

the issuing judge “to draw reasonable inferences about where evidence is likely to be kept.” *United States v. Rodriguez-Suazo*, 346 F.3d 637, 644 (6th Cir. 2003) (citations omitted); *see also Gates*, 462 U.S. at 238-40; *United States v. Brown*, 828 F.3d 375, 384 (6th Cir. 2016) (noting “the Supreme Court’s rejection of ‘rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach’ when evaluating probable cause” (quoting *Florida v. Harris*, 568 U.S. 237, 244 (2013))). “The affidavit supporting the search warrant must demonstrate a specific and concrete nexus between the evidence sought and the place to be searched.” *Rodriguez*, 716 F. App’x at 389 (citing *United States v. Carpenter*, 360 F.3d 591, 594-95 (6th Cir. 2004)). As the reviewing court, this Court must simply “[e]nsure that the [issuing] judge had a ‘substantial basis’ for concluding that probable cause existed.” *United States v. Young*, 847 F.3d 328, 345 (6th Cir. 2017) (quoting *Gates*, 462 U.S. at 238-39).

Here, a common-sense analysis of the facts set forth in the affidavit reveals a “fair probability” that evidence of drug trafficking would be found at Silliman’s apartment, even absent the allegedly false statement concerning the traffic stop. *Gates*, 462 U.S. at 238. First, the heroin packaged inside a piece of mail bearing Silliman’s name and address strongly indicates a link between Silliman’s apartment and drug trafficking. Though Silliman insists that “[t]here are a multitude of equally possible scenarios which allow for th[e] scrap of paper being present in the deceased’s room[] without any illegal drug distribution on the part of the defendant” (D.N. 73, PageID # 215), the most obvious and logical inference is that the heroin originated from the address listed on that scrap of paper. Combined with Allen’s communications to and from a “burner” phone linked to Silliman under a false name, the 2015 tip and the reported suspicions of neighbors that Silliman was dealing heroin from the apartment, Silliman’s admission to police that he was a heroin user, the attempted robbery of the apartment

and Silliman's hurried disposal of garbage immediately thereafter, and the statement of Officer Doyle's source that there had recently been a pattern of short stays at Silliman's address consistent with drug trafficking, the heroin package provided a "substantial basis" for the issuing judge's conclusion that probable cause existed. *Young*, 847 F.3d at 345 (citation omitted). While any one of these facts might alone be insufficient, the totality of the circumstances, "viewed through the lens of common sense," supported a finding of probable cause. *Harris*, 568 U.S. at 248; *see Gates*, 462 U.S. at 238; *United States v. Merrell*, 330 F. App'x 556, 561 (6th Cir. 2009) (noting that although uncorroborated anonymous tips did not, standing alone, establish probable cause, the tips "became significantly more credible" "when considered along with" other evidence suggesting the defendant was engaged in production of methamphetamine).

Silliman's contention that the information contained in the affidavit is stale is unpersuasive. (*See* D.N. 69, PageID # 186-87, 189; D.N. 73, PageID # 216-18) As an initial matter, the Court does not find it appropriate to ignore any information from before March 11, 2016, as Silliman suggests. (*See* D.N. 69, PageID # 187-88; D.N. 73, PageID # 212-13) Although the affidavit states that LMPD "had conducted surveillance and had not determined any illegal activity" following the July 31, 2015 anonymous tip (D.N. 72-2, PageID # 204), it does not indicate that the surveillance continued from that date until the complaint was closed more than seven months later, or that there was any additional investigation of Silliman's residence following the attempted robbery (the date of which is unclear). (*See id.*) Nor does the complaint being closed negate the fact that Silliman called LMPD in November 2015 from a phone number linked to the "burner" phone that was one of Allen's last contacts. (*See id.*, PageID # 204-06) In short, there is no bright line between events before and after the date the complaint was closed. Even if there were, Silliman has cited no authority for the proposition that

a detailed anonymous tip is worth nothing in the probable-cause analysis if it was investigated without a finding of illegal activity, and the Court is aware of none.<sup>4</sup>

Moreover, the neighbors' concerns, the attempted robbery, and Silliman's suspicious behavior afterward, as well as the more recent facts (e.g., the heroin packaged in a piece of Silliman's mail), indicate "that the criminal activity in question is ongoing and continuous, or closer to the 'drug den' end of the continuum." *Rodriguez*, 716 F. App'x at 390 (quoting *United States v. Hython*, 443 F.3d 480, 485 (6th Cir. 2006)). The Sixth Circuit "ha[s] recognized a 'general principle that when "the affidavit properly recites facts indicating activity of a protracted and continuous nature, a course of conduct, the passage of time becomes less significant.'"" *United States v. Perry*, 864 F.3d 412, 415 (6th Cir. 2017) (quoting *United States v. Spikes*, 158 F.3d 913, 924 (6th Cir. 1998)). Thus, the seventeen-day gap between Allen's death and the issuance of the search warrant is not dispositive: "[w]hile 'drugs are usually sold and consumed in a prompt fashion,'" the Sixth Circuit has found even longer periods to be acceptable where—as here—other facts indicate ongoing drug trafficking at the place to be

---

<sup>4</sup> The Court acknowledges that the tip is entitled to less weight in light of its anonymous source and its inaccuracy regarding Silliman's parole status. *See Merrell*, 330 F. App'x at 561 (citing *Carpenter*, 360 F.3d at 595, and *United States v. Campbell*, 256 F.3d 381, 388 (6th Cir. 2001), for the proposition that an uncorroborated anonymous tip alone does not provide probable cause); *cf. Gates*, 462 U.S. at 244 (corroboration of some tip details indicates that other details are also true). Nevertheless, the detailed nature of the tip entitles it to *some* weight. *See Gates*, 462 U.S. at 233-34 (explaining need to balance factors of informant's reliability and basis of knowledge); *see also United States v. Williams*, 483 F. App'x 21, 25 (6th Cir. 2012) ("Tips that provide specific details or predictions of future action fall higher on the reliability scale because they suggest the existence of knowledge to which the public might not have access." (citing *Alabama v. White*, 496 U.S. 325, 332 (1990))). Meanwhile, the tip from an unnamed source known to the police regarding a "pattern of short stay[s] . . . consistent with . . . narcotics trafficking" at Silliman's apartment (D.N. 72-2, PageID # 206), is properly discounted due to its lack of detail, but not the nature of its source. *See Williams*, 483 F. App'x at 25-26 (observing that tips provided face-to-face, even where the source is unnamed or unknown, are generally more reliable than anonymous tips); *id.* at 26 ("[Sixth Circuit] precedents require that tips from anonymous informants be weighed differently in the reasonable-suspicion or probable-cause analyses than those provided by unidentified face-to-face informants.").

searched. *Perry*, 864 F.3d at 415 (quoting *United States v. Frechette*, 583 F.3d 374, 378 (6th Cir. 2009)) (finding that “evidence of drug sales two to fifty-one days before [the probable-cause determination] is recent enough . . . to suggest that there may be further evidence of illegality in that place” and noting that the court had previously “held that 23-month-old evidence of drug sales was not stale when paired with information regarding a drug delivery in the prior month” (citing *United States v. Greene*, 250 F.3d 471, 480-81 (6th Cir. 2001))). Given the affidavit’s recitation of facts suggesting drug trafficking at the apartment since 2015, this does not appear to be a case involving merely “the occasional sale from [the defendant’s] personal holdings of drugs to known acquaintances.” *Hython*, 443 F.3d at 485.

### III.

Because there was a substantial basis for a finding of probable cause even without the challenged statements, no hearing is necessary, and suppression is not warranted. *See Brown*, 857 F.3d at 339. Accordingly, and the Court being otherwise sufficiently advised, it is hereby

**ORDERED** that Silliman’s motion to suppress (D.N. 69) is **DENIED**.